No. 17-9560

# In the Supreme Court of the United States

HAMID MOHAMED AHMED ALI REHAIF, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE ELEVENTH CIRCUIT*

## BRIEF FOR THE UNITED STATES


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## QUESTION PRESENTED

Whether an alien who is illegally or unlawfully in the United States and knowingly possesses a firearm or ammunition thereby "knowingly violates," 18 U.S.C. 924(a)(2), the federal prohibition against possession of a firearm or ammunition by "an alien * * * illegally or unlawfully in the United States," 18 U.S.C. 922(g)(5)(A).

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## BRIEF FOR THE UNITED STATES

### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 888 F.3d 1138. A prior opinion of the court of appeals (Pet. App. 21a-37a) is reported at 868 F.3d 907.

### JURISDICTION

The judgment of the court of appeals was entered on March 26, 2018. The petition for a writ of certiorari was filed on June 21, 2018, and the petition was granted on January 11, 2019. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

### STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-53a.

### STATEMENT

Following a jury trial in the United States District Court for the Middle District of Florida, petitioner was

convicted on two counts of possession of a firearm and ammunition by an alien unlawfully in the United States, in violation of 18 U.S.C. 922(g)(5)(A) and 924(a)(2). Judgment 1. The district court sentenced petitioner to 18 months of imprisonment, to be followed by two years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-20a.

**A. Petitioner's Offenses**

1. In August 2013, petitioner, a citizen of the United Arab Emirates, entered the United States on an F-1 nonimmigrant student visa to study mechanical engineering at the Florida Institute of Technology (Florida Tech). Pet. App. 2a; D. Ct. Doc. 73-6; 5/16/16 Tr. 214. Before his entry, petitioner signed a form in which he certified that he sought "to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study" at Florida Tech. D. Ct. Doc. 73-4; see Pet. App. 2a-3a; 5/16/16 Tr. 210, 237-239.

Petitioner also certified that he had "read and agreed to comply with the terms and conditions of [his] admission" to the United States, including a condition that he remain "enrolled as a full-time student" in order to maintain his "nonimmigrant student status." D. Ct. Doc. 73-3, at 1-2; D. Ct. Doc. 73-4; see Pet. App. 2a. Petitioner further acknowledged that a failure to comply with that requirement would "result in the loss of [his] student status and subject [him] to deportation." D. Ct. Doc. 73-3, at 2; see D. Ct. Doc. 73-4.

During his first year at Florida Tech, petitioner failed or withdrew from every class he took, prompting the school to "academically dismiss[]" him in May 2014. 5/16/16 Tr. 225-226; see D. Ct. Doc. 73-9. After petitioner appealed that dismissal, Florida Tech condition-

ally readmitted him for the fall 2014 semester, but petitioner continued to underperform, earning four Fs and a D that term. 5/16/16 Tr. 226; D. Ct. Doc. 73-9. On December 17, 2014, Florida Tech again academically dismissed petitioner, and petitioner did not appeal that dismissal. Pet. App. 3a; 5/16/16 Tr. 191-192, 221.

On January 21, 2015, Florida Tech sent petitioner emails informing him that, in light of his academic dismissal, his "immigration status w[ould] be terminated on February 5, 2015," unless he transferred to another university or notified Florida Tech that he had already left the United States. D. Ct. Docs. 73-7, 73-8; see 5/16/16 Tr. 218. The school was required to report petitioner's standing in a computerized tracking system administered by the Department of Homeland Security. 5/16/16 Tr. 236-237, 241. Petitioner took no action in response to the emails, and on February 23, 2015, a designated Florida Tech official marked petitioner's record in the federal tracking system as "terminated." Pet. App. 3a; D. Ct. Doc. 73-10, at 2; 5/16/16 Tr. 191.

2. As petitioner had been warned, because he was no longer pursuing his course of study at Florida Tech, petitioner lost his lawful F-1 nonimmigrant status and was required to "depart the country in a timely manner." 5/16/16 Tr. 241; see *id.* at 240-242; Pet. App. 3a. Although petitioner's student visa listed an expiration date of July 2017, see D. Ct. Doc. 73-6, the visa was "a travel document" that did not authorize petitioner to remain in the country once his student status changed, 5/16/16 Tr. 239-240. Instead of leaving the country, however, petitioner remained in the United States and became a regular guest at the Hilton Rialto Hotel in Melbourne, Florida, eventually staying there "for months at a time." 5/17/16 Tr. 15; see *id.* at 13-15; Pet.

App. 3a. While there, he gave two different hotel employees nine-millimeter bullets as gifts. 5/17/16 Tr. 13-17, 23-24, 27-28.

On December 2, 2015, having stayed in the United States more than nine months after the termination of his lawful immigration status, petitioner visited a shooting range in Melbourne. Pet. App. 3a; D. Ct. Doc. 73-17; 5/17/16 Tr. 47, 53-55. At the shooting range, petitioner bought a box of nine-millimeter ammunition, rented a Glock firearm for one hour, and fired that gun at a paper target. Pet. App. 3a; D. Ct. 73-17; 5/17/16 Tr. 52-61. Midway through the hour, petitioner traded that gun for another Glock firearm, also provided by the shooting range, and continued to shoot at the target with the new gun. 5/17/16 Tr. 62-66.

3. Six days after petitioner practiced at the shooting range, a Hilton employee called the police to report that petitioner had been acting suspiciously. Pet. App. 3a; 5/17/16 Tr. 33, 97. The employee explained that petitioner had been staying at the hotel for 53 nights, checking out every morning and then checking back in each night into a different room, and spending over $11,000 in cash on room fees. Presentence Investigation Report (PSR) ¶ 7. According to the hotel employee, petitioner always requested an eighth-floor room that faced the airport. *Ibid.* The employee also reported that petitioner had given ammunition to hotel employees and had recently claimed to have weapons in his room. PSR ¶¶ 7-8.

On receiving that information, agents with the Federal Bureau of Investigation visited the hotel and encountered petitioner in the lobby. 5/17/16 Tr. 98, 104. Petitioner agreed to speak to the agents and told them that he had been academically dismissed from Florida Tech after the fall 2014 semester. *Id.* at 98-99. After

initially claiming that he was now a student at a different university, petitioner eventually admitted that he was not attending any college. *Id.* at 99. He also admitted that "he was aware that * * * he was out of status for his immigration" because he was no longer enrolled in school. *Id.* at 101; see *id.* at 99; Pet. App. 4a.

Petitioner further admitted that he had fired two guns at the shooting range and had ammunition in his hotel room. Pet. App. 4a; 5/17/16 Tr. 31, 33-34, 98-100. Petitioner added that he had previously purchased three firearms—a Cobra .380, a Hi-Point 9mm, and one other gun of a type he could not recall—but had sold or given them away within the previous few months. PSR ¶¶ 10-11, 14. Petitioner consented to a search of his hotel room, where agents found the remaining ammunition that petitioner had purchased at the shooting range. Pet. App. 4a; 5/17/16 Tr. 31, 33-34, 100. Petitioner also consented to a search of his storage unit, where agents recovered 184 rounds of .223 and nine-millimeter ammunition that petitioner had placed there. PSR ¶ 15.

**B. District Court Proceedings**

1. Under 18 U.S.C. 922(g), it is "unlawful for any person" who falls within one of several enumerated categories to "possess in or affecting commerce[] any firearm or ammunition." The categories of people prohibited from possessing firearms and ammunition include "any person * * * who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year," 18 U.S.C. 922(g)(1), as well as "any person * * * who, being an alien * * * (A) is illegally or unlawfully in the United States; or (B) [with certain exceptions] has been admitted to the United States under a nonimmigrant visa," 18 U.S.C. 922(g)(5).

A grand jury indicted petitioner on two counts of possession of a firearm or ammunition by an alien unlawfully in the United States, in violation of 18 U.S.C. 922(g)(5)(A) and 924(a)(2), based on petitioner's possession of a Glock firearm at the shooting range and the ammunition in his hotel room. Indictment 1-2. Section 924(a)(2) provides that "[w]hoever knowingly violates" Section 922(g) or various neighboring firearm prohibitions "shall be fined as provided in this title, imprisoned not more than 10 years, or both." 18 U.S.C. 924(a)(2). The indictment alleged a violation of 18 U.S.C. 922(g)(5)(A) because petitioner's student status terminated long before he possessed the firearm and ammunition, rendering him an alien "illegally or unlawfully in the United States."

2. Before trial, the government asked the district court to instruct the jury that "[t]he United States is not required to prove that [petitioner] knew he was illegally or unlawfully in the United States." D. Ct. Doc. 53, at 33. Petitioner objected and asserted that the government bore the burden of proving both that he knowingly possessed the firearm and ammunition and that, at the time of possession, he was aware of his unlawful immigration status. Pet. App. 4a-5a. The court overruled petitioner's objection. *Id.* at 5a.

At trial, the district court instructed the jury that, to find petitioner guilty, it had to find proof beyond a reasonable doubt that (1) petitioner "knowingly possessed" a firearm or ammunition; (2) he possessed the firearm or ammunition "in or affecting interstate commerce," and (3) "before possessing the firearm or ammunition, [he] was an alien illegally or unlawfully in the United States." 5/17/16 Tr. 168; see *id.* at 168-169. The court

also told the jury that "[t]he United States is not required to prove [petitioner] knew that he was illegally or unlawfully in the United States." *Id.* at 170.

3. The jury found petitioner guilty on both counts. Verdict 1. The district court sentenced petitioner to 18 months of imprisonment, to be followed by two years of supervised release. Judgment 2-3.

**C. Court of Appeals Proceedings**

On August 17, 2017, the court of appeals issued an initial opinion affirming petitioner's convictions. Pet. App. 21a-37a. Petitioner filed a petition for rehearing; while that petition was pending, the court vacated its initial opinion and "substituted a new one." *Id.* at 39a. Because the new opinion "contain[ed] substantial revisions," the court denied petitioner's rehearing petition as moot. *Ibid.*

In the new opinion, the court of appeals again affirmed. Pet. App. 1a-20a. The court identified three elements of an 18 U.S.C. 922(g) violation: (1) "the status element," *i.e.*, whether "the defendant falls within one of the categories listed in the § 922(g) subdivisions"; (2) "the possession element," *i.e.*, whether "the defendant possessed a firearm or ammunition"; and (3) the jurisdictional element, *i.e.*, whether "the possession was 'in or affecting [interstate or foreign] commerce.'" Pet. App. 8a (quoting 18 U.S.C. 922(g)) (internal quotation marks omitted). The court adhered to its prior decision in *United States* v. *Jackson*, 120 F.3d 1226 (11th Cir. 1997), which had determined that conviction for a criminal violation of Section 922(g) does not require proof of a defendant's knowledge of his own status (there, as a felon). Pet. App. 11a & n.2. The court indicated that it might recognize a mistake-of-fact defense, but observed that "such defense is not alleged here." *Id.* at 15a n.5.

The court of appeals reasoned that "[t]extual support, prior precedent, congressional acquiescence, and analogous common law" uniformly counseled against applying a mens rea requirement to the status element of 18 U.S.C. 922(g). Pet. App. 17a; see *id.* at 8a-18a. The court took note of the "longstanding uniform body of precedent holding that the government does not have to satisfy a mens rea requirement with respect to the status element of § 922," *id.* at 12a, and observed that, "despite ample opportunity to do so, Congress has never revisited the issue" to express dissatisfaction with the prevailing judicial construction, *id.* at 13a. The court further explained that, "even at common law and [under] early American law, the government did not have the burden of proving that the defendant knew a specific fact or detail about himself." *Id.* at 14a.

## SUMMARY OF ARGUMENT

As the courts of appeals have consistently recognized, a prosecution for unlawful possession of a firearm under 18 U.S.C. 922(g) and 924(a)(2) does not require the government to prove a defendant's knowledge of his legal status or personal circumstances. Instead, the text and structure of the statute adhere to the well-settled principle that a defendant typically cannot avoid criminal liability by claiming ignorance of the law, as well as the common presumption that a defendant knows his own personal history. The absence of any requirement to prove such knowledge was central to this Court's decision in *Old Chief* v. *United States*, 519 U.S. 172 (1997), and reflects Congress's codification of the preexisting and longstanding judicial consensus. Petitioner's contrary interpretation disregards the statutory structure,

would effectively overrule *Old Chief*, and would transform firearm-possession trials into extended explorations of the unattractive details of the defendant's past.

Section 922(g) makes it "unlawful" for people with specified background circumstances—including felons, fugitives, and aliens illegally in the United States—to ship, transport, possess, or receive firearms or ammunition in interstate or foreign commerce. As a regulatory prohibition designed to keep guns out of potentially dangerous hands, Section 922(g) itself does not require any particular mens rea. Congress *did* include express mens rea requirements in neighboring regulatory provisions, *e.g.*, 18 U.S.C. 922(d), (h), (i), and (j), but conspicuously omitted one from Section 922(g). Someone's recklessness or negligence about his own status as a felon, or as an alien illegally or unlawfully in the United States, does not exempt him from Section 922(g)'s firearm prohibition.

The criminal penalties prescribed in Section 924(a)(2) for someone who "knowingly violates" Section 922(g), intern, require proof that the defendant had knowledge of his offense conduct—the shipping, transporting, possessing, or receiving of a firearm or ammunition—not his own background. Just as Section 924(a)(2) imposes no mens rea requirement on the jurisdictional element of Section 922(g) (*i.e.*, the item's movement in interstate or foreign commerce), it does not do so for the circumstances that made the defendant ineligible to possess a firearm. Ignorance of the law is rarely ever a defense, except where Congress says that a crime must be committed "willfully"—as it did elsewhere in the same subsection, 18 U.S.C. 924(a)(1)(D), but did not do in Section 924(a)(2). And the text and structure of Sections 924(a)(2)

and 922 illustrate that the "knowingly" requirement does not refer to background circumstances.

Section 924(a)(2) applies not only to someone who "knowingly violates" Section 922(g), but also anyone who "knowingly violates" Sections 922(d), (i), or (j). Those provisions are part of the same regulatory regime as Section 922(g), but instead of applying irrespective of someone's mens rea, they apply only where someone "know[s] or ha[s] reasonable cause to believe" that particular background circumstances exist. 18 U.S.C. 922(d), (i), and (j). It makes no sense to apply Section 924(a)(2)'s "knowingly" requirement to those background circumstances; a person cannot "*knowingly* know or have reasonable cause to believe" something. And if the singular phrase "knowingly violates" refers only to conduct with respect to Sections 922(d), (i), and (j), it must have the same meaning with respect to Section 922(g). That textual inference makes particular sense given that the background circumstances referenced in 922(g) are all legal and personal qualities, like immigration status, as to which the law typically presumes knowledge.

This Court's decision in *Old Chief* was accordingly premised on the understanding that a criminal prosecution for violating Section 922(g) requires proof only that the defendant *had* a particular status—not that he *knew* his status. There, the Court held that a defendant in a firearm-possession prosecution must be allowed to stipulate to his status as a convicted felon under 18 U.S.C. 922(g)(1), reasoning that allowing the government to introduce evidence of the nature of his past crime would risk unfair prejudice in return for little if any probative benefit. Crucial to the Court's decision was that a defendant's "legal status," as a person ineligible to possess

a firearm, is "an element entirely outside the natural sequence of what the defendant is charged with thinking and doing to commit the current offense." 519 U.S. at 190-191. The Court made clear that if evidence about the nature of his past crime were relevant to proof of "knowledge," the government could insist on introducing it. *Id.* at 190 (citation omitted).

The Court's understanding in *Old Chief* accords not only with the statutory text and structure, but also with the long history of federal firearm regulation. Courts have for decades interpreted the criminal penalties for violating federal firearms laws to require knowledge of conduct, but not of status. Congress added the "knowingly violates" language in 1986 to codify that understanding, clarifying that Section 922(g) was not subject to the separate willfulness requirement that Congress was then adding for prosecuting other (more technical) firearm violations. Courts since 1986 have thus uniformly continued to understand that proof of knowledge is required only as to the defendant's conduct. If that continuation of preexisting practice were in fact the *opposite* of what Congress intended, its 1986 enactment to accomplish it presumably would have addressed such a severe misunderstanding in one of the many amendments that it has made to Sections 922 and 924 during that time.

Congress had good reason to maintain the longstanding approach to firearm-possession prosecutions. Few defendants will actually lack knowledge of their own status (*e.g.*, as felons, fugitives, or aliens in the United States unlawfully), and federal licensing and other laws are designed to put them on notice of regulatory requirements. But *proving* such knowledge at trial will often be complicated, requiring introduction of

evidence extraneous to the defendant's illegal firearm possession—in the case of felons, for instance, evidence of past offenses. As *Old Chief* understood, that evidence is likely to distract jurors or lead them into a prejudicial chain of bad-character reasoning.

Petitioner's argument that such evidence is in fact required rests almost exclusively on his erroneous importation of the word "knowingly" from Section 924(a)(2) into Section 922(g), albeit only partway (because he skips over jurisdictional elements). But petitioner cannot explain how "knowingly" would apply to phrases within Section 922(g) that have different verb tenses, or how it should apply to other subsections that have express mens rea requirements of their own. And petitioner's reading would suggest a highly anomalous scheme in which firearm dealers have a greater duty to investigate the circumstances of their customers than the customers themselves have.

Finally, even if petitioner were correct that the government had to prove his knowledge that he was "illegally or unlawfully in the United States," 18 U.S.C. 922(g)(5)(A), any error was harmless on this record. Petitioner certified on entering the United States that he was required to remain a fulltime student; following his dismissal from Florida Tech, the school informed him that his immigration status would be terminated; and after lying to law enforcement about having transferred to a different school, petitioner admitted that he knew he was out of status.

## ARGUMENT

Petitioner was subject to criminal penalties under the federal firearm laws because he was an alien "illegally or unlawfully in the United States," 18 U.S.C. 922(g)(5)(A), who possessed a firearm and ammunition "knowingly," 18 U.S.C. 924(a)(2). In enacting Sections 922(g)(5)(A) and 924(a)(2), Congress did not take the unusual step of requiring proof that the defendant had subjective awareness of his legal status. Nor did it indulge a presumption that a defendant is unaware of his own personal history and characteristics, and thereby provide a safe harbor for aliens who are reckless or negligent about their immigration status. Instead, Section 922(g) prohibits certain people from particular firearm-related conduct irrespective of mens rea, and Section 924(a)(2) prescribes criminal penalties for anyone who "knowingly violates" that provision by engaging in such conduct.

Even petitioner does not contend that Section 924(a)(2) requires proof of a defendant's knowledge *that he is violating* Section 922(g); he instead suggests an atextual transposition of the word "knowingly" into every element of a Section 922(g) violation (skipping jurisdictional ones). But such linguistic surgery would disrupt the statutory scheme, which already includes explicit status-related mens rea requirements where Congress wanted them. It would also upset this Court's precedent —which has presumed that knowledge of status is not required—by turning firearm-possession trials into inquests into the unsympathetic details of a defendant's past history. The decision below, which reflects the long-held, universal understanding of the firearm laws, should be affirmed.

## I. THE KNOWLEDGE REQUIREMENT OF 18 U.S.C. 924(a)(2) APPLIES TO A DEFENDANT'S OFFENSE CONDUCT, NOT HIS LEGAL STATUS

The federal firearms laws both regulate primary conduct and impose criminal penalties for certain violations. As to the former, 18 U.S.C. 922(g) prohibits certain people from particular acts of "ship[ping]," "transport[ing]," "possess[ing]," or "receiv[ing]" firearms, irrespective of their mens rea. As to the latter, anyone who "knowingly violates" Section 922(g) or certain neighboring regulatory provisions is subject to zero to ten years in prison, 18 U.S.C. 924(a)(2), and anyone with a particular criminal history who "violates" Section 922(g) is subject to 15 years to life in prison, 18 U.S.C. 924(e)(1). The "knowingly" requirement, which appears only in Section 924(a)(2), was added in 1986 to codify the preexisting judicial consensus regarding the mens rea required for an *act* that violates Section 922(g), distinguishing it from the "willful[]" mens rea required under other provisions of Section 924, see, *e.g.*, 18 U.S.C. 924(a)(1)(D). Petitioner errs in reading it instead to impose a new mens rea requirement that would apply to a firearm defendant's status. That reading would unrealistically presume a defendant to be unaware of his own personal characteristics, would require proof of knowledge that all but the rarest defendants will in reality have, and would—by requiring the Court to revisit *Old Chief* v. *United States*, 519 U.S. 172 (1997)—make the facts surrounding the defendant's dangerousness (rather than his firearm-related conduct) the focus of a firearm prosecution.

### A. Section 922(g)'s Regulatory Prohibition Of Firearm-Related Conduct By Certain Categories Of People Applies Irrespective Of A Regulated Person's Mens Rea

Section 922(g) itself is a regulatory prohibition on certain activities involving firearms and ammunition. Unlike other neighboring regulatory provisions, it does not contain any mens rea requirement.

1. Under Section 922(g), "[i]t shall be unlawful for any person" who satisfies any of several sets of criteria "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. 922(g).

The classes of people subject to that prohibition include persons who have been "convicted in any court of, a crime punishable by imprisonment for a term exceeding one year," 18 U.S.C. 922(g)(1); persons who are "fugitive[s] from justice," 18 U.S.C. 922(g)(2); persons who "ha[ve] been adjudicated as * * * mental defective[s] or who ha[ve] been committed to a mental institution," 18 U.S.C. 922(g)(4); and persons "convicted in any court of a misdemeanor crime of domestic violence," 18 U.S.C. 922(g)(9). They also include "any person * * * who, being an alien * * * (A) is illegally or unlawfully in the United States; or (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa," 18 U.S.C. 922(g)(5).

Section 922(g)'s prohibitions are not contingent on mens rea. The provision does not include any such requirement explicitly, and a mens rea requirement cannot be inferred implicitly. The presumption of mens rea that may apply when a defendant faces "punishment for a harmful act," *Morissette* v. *United States*, 342 U.S.

246, 250-251 (1952), does not apply to a regulatory provision that merely specifies whether certain conduct is lawful, without attaching any punishment. It would not be sensible to construe Section 922(g) as, for example, allowing someone "adjudicated as a mental defective," 18 U.S.C. 922(g)(4), to possess a gun, so long as his mental deficiency precludes him from remembering the adjudication. Nor would an alien unlawfully in the United States be entitled under Section 922(g)(5)(A) to possess a gun, where he is reckless or negligent about his immigration status.

As this Court has recognized, Section 922(g) is designed "to keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm without becoming a threat to society." *Dickerson* v. *New Banner Inst., Inc.*, 460 U.S. 103, 112 (1983) (citations and internal quotation marks omitted); see, *e.g.*, *Small* v. *United States*, 544 U.S. 385, 393-394 (2005); *Lewis* v. *United States*, 445 U.S. 55, 60-62, (1980); *Huddleston* v. *United States*, 415 U.S. 814, 824 (1974). Nothing in Section 922(g), either textually or otherwise, suggests that someone who falls into a class deemed to present such a danger would be entitled to possess a gun based on his lack of self-awareness about the circumstances that make him dangerous. Rather, "the persons Congress classified as potentially irresponsible and dangerous * * * are comprehensively barred by the [statute] from acquiring firearms by any means." *Barrett* v. *United States*, 423 U.S. 212, 218 (1976).

2. The absence of any mens rea requirement in Section 922(g) itself is particularly instructive when compared to other neighboring firearm regulations that *do* contain such requirements. "Where Congress includes particular language in one section of a statute but omits

it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello* v. *United States*, 464 U.S. 16, 23 (1983) (brackets and citation omitted); see, *e.g.*, *Loughrin* v. *United States*, 134 S. Ct. 2384, 2390 (2014) (same).

Under Section 922(d), for example, it is unlawful "to sell or otherwise dispose of" a firearm to another person "*knowing or having reasonable cause to believe* that such person" falls within many of the same status categories identified in Section 922(g)—including where the recipient is an alien "illegally or unlawfully in the United States." 18 U.S.C. 922(d)(5)(A) (emphasis added). Section 922(d)(5)(A) is thus essentially parallel to Section 922(g)(5)(A), except that it provides a mens rea requirement ("knowing or having reasonable cause") that applies to the background circumstance that makes the conduct (disposing of a firearm) unlawful.

Other nearby statutory firearm prohibitions likewise contain express mens rea requirements with respect to background circumstances. Under 18 U.S.C. 922(h), it is "unlawful for any individual, *who to that individual's knowledge* and while being employed for any person" covered by Section 922(g), to engage in certain firearms-related activities in the course of that employment. *Ibid.* (emphasis added). And under Sections 922(i) and (j), it is "unlawful for any person" to engage in certain activities with respect to stolen firearms or ammunition "*knowing or having reasonable cause to believe* that the firearm or ammunition was stolen." 18 U.S.C. 922(i) and (j) (emphasis added). Those express mens rea requirements in Section 922(g)'s neighboring provisions provide additional reason not to read one into

Section 922(g) itself, which conspicuously omits any such requirement from its text.

### B. A Person "Knowingly Violates" Section 922(g) If He Is Covered By That Provision And Knowingly Engages In The Conduct That It Prohibits

The only textual mens rea requirement that applies in the context of a Section 922(g) prosecution appears in Section 924(a)(2), which specifies criminal penalties for certain violations of a number of regulatory firearms provisions. Section 924(a)(2) provides that "[w]hoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (*o*) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both." As this Court's precedent reflects, the phrase "knowingly violates" refers to the mens rea for the *conduct* comprising the violation, rather than to the mens rea for the background circumstances.

#### *1. Statutory text, structure, and context illustrate that Section 924(a)(2)'s knowledge requirement applies only to a defendant's conduct*

Section 924(a)(2) applies to a defendant who "knowingly violates" one of several covered regulatory provisions. As previously discussed, some of those provisions specify a mens rea that must be established for background circumstances, while others—like Section 922(g), the provision at issue here—apply irrespective of mens rea as to background circumstances. The only knowledge that Section 924(a)(2) thus requires for a violation of Section 922(g) is knowledge of the violative conduct—namely, shipping, transporting, possessing, or receiving a firearm or ammunition. That interpretation reflects

general principles under which criminal statutes typically do not require the prosecution to prove that a defendant knows his own legal status or personal history.

a. As petitioner appears to recognize (because he does not argue otherwise), the phrase "knowingly violates" does not literally require proof of knowledge that the defendant's conduct *is* a violation of the regulatory prohibition—*i.e.*, proof that a defendant knew his conduct to be illegal. Any contrary contention could not be squared with this Court's construction of the same term ("knowingly") in the preceding statutory paragraph, 18 U.S.C. 924(a)(1). "With respect to the * * * categories of conduct that are made punishable by [Section 924(a)(1)], if performed 'knowingly,'" the Court explained, "the background presumption that every citizen knows the law makes it unnecessary to adduce specific evidence to prove that 'an evil-meaning mind' directed the 'evil-doing hand.'" *Bryan* v. *United States*, 524 U.S. 184, 193 (1998). The same meaning of "knowingly" accordingly holds for Section 924(a)(2), which was in fact originally part of Section 924(a)(1). See 18 U.S.C. 924(a)(1)(B) (Supp. IV 1986) (original location); see also Pub. L. No. 100-690, § 6462, 102 Stat. 4374 (reorganization); *Robers* v. *United States*, 572 U.S. 639, 643 (2014) ("Generally, identical words used in different parts of the same statute are presumed to have the same meaning.") (citations, ellipsis, and internal quotation marks omitted).

The principle that "ignorance of the law or a mistake of law is no defense to criminal prosecution" is "deeply rooted in the American legal system." *Cheek* v. *United States*, 498 U.S. 192, 199 (1991); see *Barlow* v. *United States*, 32 U.S. (7 Pet.) 404, 411 (1833) (rejecting mistake-

of-law defense because "[t]he whole course of the jurisprudence, criminal as well as civil, of the common law, points to a different conclusion"). "Based on the notion that the law is definite and knowable, the common law presumed that every person knew the law." *Cheek*, 498 U.S. at 199; see O. W. Holmes, Jr., *The Common Law* 48 (1881) ("[T]o admit the excuse [of ignorance] at all would be to encourage ignorance where the law-maker has determined to make men know and obey."). Congress may choose to deviate from that presumption, for instance by specifying that a crime must be committed "'willfully,'" a term that may connote the "intentional violation of a known legal duty." *United States* v. *Bishop*, 412 U.S. 346, 360 (1973). But unless Congress clearly indicates that it is "carving out an exception," statutory language must be construed in light of "the traditional rule." *Cheek*, 498 U.S. at 200.

Congress did in fact use the term "willfully" elsewhere in Section 924(a). Section 924(a)(1)(D) is a catch-all clause that prescribes punishment for anyone who "willfully violates any other provision of this chapter," 18 U.S.C. 924(a)(1)(D), thereby supplementing the portions of Section 924 that attach more-specific punishments to violations of other regulatory provisions. "[T]he term 'willfully' in § 924(a)(1)(D) requires a defendant to have 'acted with knowledge that his conduct was unlawful.'" *Dixon* v. *United States*, 548 U.S. 1, 5 (2006) (quoting *Bryan*, 524 U.S. at 192). But the same is not true for a "knowing[]" violation covered by Section 924(a)(2). See *Russello*, 464 U.S. at 23; see also *Bryan*, 524 U.S. at 193.

b. The knowledge requirement of Section 924(a)(2) is instead satisfied when the defendant knowingly commits the act or acts underlying the regulatory violation—

*i.e.*, shipping, transporting, possessing, or receiving a firearm or ammunition. The Court has explained that "unless the text of the statute dictates a different result, the term 'knowingly' merely requires proof of knowledge of the facts that constitute the offense." *Bryan*, 524 U.S. at 193 (footnote omitted). And in the context of a violation of Section 922(g), "the defendant's status"—*e.g.*, as a felon or an unlawful alien—is "an element entirely outside the natural sequence of what the defendant is charged with thinking and doing to commit the current offense." *Old Chief*, 519 U.S. at 191.

Although a defendant's status is an element of a criminal offense defined by Sections 922(g) and 924(a)(2), "different elements of the same offense can require different mental states," *Staples* v. *United States*, 511 U.S. 600, 609 (1994). Petitioner accordingly acknowledges (Br. 31-32) that at least one element of the offense—the requirement of a connection to interstate or foreign commerce, see 18 U.S.C. 922(g)—does not require any showing of mens rea. As he recognizes, mens rea requirements often do not attach to jurisdictional elements, see *Torres* v. *Lynch*, 136 S. Ct. 1619, 1631 (2016), and the application of that general rule here undermines any possible textual inference that the "knowingly" mens rea applies to every element.

The structure of the statute shows that background circumstances, like the defendant's status, are likewise excluded. As discussed above, the range of regulatory provisions to which Section 924(a)(2) applies includes some that require mens rea as to background circumstances and some that do not. The word "knowingly" in Section 924(a)(2) cannot be construed to overwrite those separate legislative choices. Applying a "knowingly" requirement to the background circumstances

underlying violations of provisions like Sections 922(d), (i), and (j), which already specify that a particular prohibition applies only when someone "know[s] or ha[s] reasonable cause to believe" that the relevant circumstance exists, produces a textual muddle. A person cannot sensibly "*knowingly* know or have reasonable cause to believe" something. Instead, with respect to those regulatory provisions, "knowingly violates" must refer to the acts, and not to the background circumstances. And if that singular phrase has that meaning with respect to some of the covered regulatory violations, it should have that same meaning with respect to all of them. See *Clark* v. *Martinez*, 543 U.S. 371, 380 (2005).

Differential application of the "knowingly" requirement to Section 922(g), as compared to regulatory provisions with more explicit mens rea requirements, would not only be textually incongruous but would produce unsound results. Under such a regime, the government could convict a firearm *seller* who has only "reasonable cause" to know that the purchaser is an alien unlawfully in the United States, see 18 U.S.C. 922(d)(5)(A), but could not convict *the purchaser himself* unless it proves that he has actual knowledge of his own immigration status, see 18 U.S.C. 922(g)(5)(A). Congress could not have intended to impose a knowledge requirement for prosecuting aliens (or felons, or other categories of regulated people), but a negligence requirement for those who unwittingly deal with them.

c. Requiring knowledge of the background circumstance of a defendant's status, in the context of a prosecution for a violation of Section 922(g), would be anomalous in other ways as well. To begin with, this Court has repeatedly rejected arguments "that the prosecution must prove a defendant's knowledge of the legal

status" of items, persons, or actions as a prerequisite to a criminal conviction, *Hamling* v. *United States*, 418 U.S. 87, 121 (1974), including when construing statutes that punish defendants who act "knowingly." See, *e.g.*, *United States* v. *International Minerals & Chem. Corp.*, 402 U.S. 558, 561-565 (1971); *Boyce Motor Lines, Inc.* v. *United States*, 342 U.S. 337, 342-343 (1952); see also *Boyce Motor Lines*, 342 U.S. at 345 (Jackson, J., dissenting). Here, the fact that someone is an "alien * * * illegally or unlawfully in the United States," 18 U.S.C. 922(g)(5)(A), is plainly a "legal" status, as the Court has understood that concept.

In addition, as the court of appeals recognized (Pet. App. 15a), the typical practice is that "the government need not prove that the defendant knew *his own status*, even when this status is what brings the defendant within the ambit of a criminal law." For example, a person who is "at least eighteen years of age" faces enhanced criminal penalties if he knowingly and intentionally uses a person under 18 years of age to avoid detection for a federal drug offense. 21 U.S.C. 861(a)(2); see 21 U.S.C. 861(b) and (c). The government, however, need not prove beyond a reasonable doubt that the defendant knew his own age (or, indeed, the age of the juvenile used in the crime). See *United States* v. *Chin*, 981 F.2d 1275, 1279-1280 (D.C. Cir. 1992) (R.B. Ginsburg, J.) ("It is implausible that Congress would have placed on the prosecution the often impossible burden of proving, beyond a reasonable doubt, that a defendant knew the youth he enticed was under eighteen."), cert. denied, 508 U.S. 923 (1993). Nor, for example, need the government prove self-knowledge of status by a "public official" who accepts a bribe, 18 U.S.C 201(b)(2); by "an officer, employee, contractor, or consultant of the United States"

who misappropriates classified materials, 18 U.S.C. 1924(a); or by a "parent, legal guardian, or person having custody or control of a minor" who allows the minor to be used for child pornography, 18 U.S.C. 2251(b).

Little reason exists to conclude that Congress deviated from its normal approach and required proof that a defendant knew his own personal attributes as a prerequisite for a conviction here. Federal law prohibits the entry of an alien into the United States except as authorized by law, see 8 U.S.C. 1185(a)(1), 1325(a) and (b), and aliens arriving at our borders are generally charged with the burden of showing that they are "clearly and beyond a doubt entitled to be admitted," 8 U.S.C. 1225(b)(2)(A); see 8 U.S.C. 1361 ("[T]he burden of proof shall be upon such person to establish that he * * * is not inadmissible [and] * * * that he is entitled to the nonimmigrant * * * status claimed."). An alien may gain admission as a nonimmigrant only "for such time and under such conditions" as the relevant regulations prescribe, and he must "depart from the United States" "at the expiration of such time or upon failure to maintain the status under which he was admitted." 8 U.S.C. 1184(a)(1). An alien "who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted," 8 U.S.C. 1227(a)(1)(C)(i), is accordingly removable and under a continuing legal obligation to leave the country.

Federal law imposes numerous restrictions based on immigration status, and people are expected to know their status so that they avoid engaging in prohibited conduct. For example, all noncitizens (and all felons) are ineligible to serve on federal juries, 28 U.S.C. 1865(b)(1) and (5), and they must disclose that status if called for jury service, see 28 U.S.C. 1864(a), 1865(a);

*Edmonson* v. *Leesville Concrete Co.*, 500 U.S. 614, 622-623 (1991) (describing federal jury-selection process). Aliens who are illegally or unlawfully in the United States are also ineligible for many federal, state, and local public benefits, including public assistance, unemployment benefits, and government grants, contracts, and loans, see 8 U.S.C. 1611, 1621(a) and (c)(1), 1641(b), and thus should not apply for them. In addition, aliens are generally barred from voting in federal elections, and aliens who violate that restriction are subject to prosecution. 18 U.S.C. 611(a) and (b). Even an alien who "reasonably believed at the time of voting * * * that he or she was a citizen of the United States" commits a crime by voting, except in the narrow circumstance where the alien is also the child of United States citizens and permanently resided in the United States before the age of 16. 18 U.S.C. 611(c). Similarly narrow reasonable-belief exceptions appear in certain other statutes that impose penalties or adverse immigration consequences on aliens who engage in prohibited conduct. See, *e.g.*, 8 U.S.C. 1182(a)(6)(C)(ii) (bar on admission to the United States of aliens who falsely represent themselves to be United States citizens); 8 U.S.C. 1227(a)(3)(D) (providing for deportation of aliens making false claims of United States citizenship); 18 U.S.C. 1015(f) (criminal prohibition on knowingly making a false claim of United States citizenship in order to vote).

Here, in contrast, where Congress did not include such an exception, the normal presumption of knowledge of one's own background or status should apply. A defendant in a prosecution for violating Section 922(g)(5)(A) may put the government to its proof that he actually *was* illegally or unlawfully in the United States. See, *e.g.*, Nat'l Immigrant Justice Ctr. (NIJC)

Amicus Br. 9-10. But he may not rely on the complexities of that law to mount a mistake-of-law defense. See, *e.g.*, *Elonis* v. *United States*, 135 S. Ct. 2001, 2009 (2015) ("The familiar maxim that 'ignorance of the law is no excuse' typically holds true."). His disregard or ignorance of the circumstances that give rise to a legal obligation to depart the United States does not entitle him to escape liability for illegally possessing a firearm while he remains.

***2. This Court has understood that a prosecution for violating Section 922(g) requires knowledge only as to conduct***

Although this Court has not directly held that knowledge of conduct is sufficient to establish a criminal violation of Section 922(g), it has explicitly relied on that understanding. Indeed, the Court's decision in *Old Chief* v. *United States*, *supra*, is entirely dependent on that premise.

The defendant in *Old Chief* was charged with being a convicted felon in possession of a firearm, in violation of Sections 922(g)(1) and 924(a)(2). 519 U.S. at 174; see *United States* v. *Old Chief*, 56 F.3d 75, 1995 WL 325745, at *4 (9th Cir. 1995) (Tbl.) (defendant received ten-year sentence, indicating prosecution under 18 U.S.C. 924(a)(2)). Because the defendant was willing to stipulate to his status as a felon, the Court held that the government should not have been allowed to introduce evidence about the nature of his prior conviction. *Old Chief*, 519 U.S. at 174-175. The Court concluded that, where a defendant offers to stipulate to his felon status, the "probative value" of evidence as to the nature of the conviction "is substantially outweighed by the danger of unfair prejudice," so as to require its exclusion under

Federal Rule of Evidence 403. 519 U.S. at 180 (citation omitted); see *id.* at 180-192.

In reaching that conclusion, the Court described a stipulation of the fact of a prior conviction as "seemingly conclusive evidence of the [prior-conviction] element" of the crime. *Old Chief*, 519 U.S. at 186; see *ibid.* ("[A]lthough the name of the prior offense may have been technically relevant, it addressed no detail in the definition of the prior-conviction element that would not have been covered by the stipulation or admission."). The Court observed that the "statutory language in which the prior-conviction requirement is couched shows no congressional concern with the specific name or nature of the prior offense beyond what is necessary to place it within the broad category of qualifying felonies." *Ibid.*; see *id.* at 201 (O'Connor, J., dissenting) (similarly recognizing that the offense has "two elements," one of which is "a defendant's prior criminal conviction"). The Court thus described the requirement to prove a prior conviction—to establish the defendant's "legal status" as a person ineligible to possess a firearm—as "an element entirely outside the natural sequence of what the defendant is charged with thinking and doing to commit the current offense." *Id.* at 190-191.

Accordingly, in applying Rule 403's balancing test, the Court in *Old Chief* viewed the probative value of prior-conviction evidence to be limited to proof of the defendant's "legal status," and not to any requirement of knowledge. 519 U.S. at 190. The Court acknowledged that the nature of the prior conviction was "relevant" to the verdict, because "it served to place [the defendant] within a particular subclass of offenders for whom firearms possession is outlawed by § 922(g)(1)." *Id.* at 179. But the Court emphasized that "if * * *

there were a justification for receiving evidence of the nature of prior acts on some issue other than status"—in particular, "to prove 'motive, opportunity, intent, preparation, plan, *knowledge*, identity, or absence of mistake or accident'"—then Federal Rule of Evidence 404(b) "guarantees the opportunity to seek its admission." *Id.* at 190 (quoting Fed. R. Evid. 404(b)) (emphasis added).

The absence of any requirement that the defendant know his legal status as a convicted felon was thus critical to the Court's holding in *Old Chief*. The Court made clear that a "prosecutor's choice" to present evidence directly, rather than by stipulation, "will generally survive a Rule 403 analysis when a defendant seeks to force the substitution of an admission for evidence creating a coherent narrative of his *thoughts and actions* in perpetrating the offense for which he is being tried." 519 U.S. at 192 (emphasis added). But the Court reasoned that in the context of a felon-in-possession prosecution, the "recognition that the prosecution with its burden of persuasion needs evidentiary depth to tell a continuous story has * * * virtually no application," because "the point at issue is a defendant's legal status, dependent on some judgment rendered wholly independently of the concrete events of later criminal behavior charged against him." *Id.* at 190.

The reasoning of *Old Chief* would not hold true, however, if the statutory scheme required the government to prove the defendant's *knowledge* of his prior conviction. If that were the case, the nature of the underlying offense (*e.g.*, its seriousness) and its prosecution (*e.g.*, details of the trial) would be quite probative of the defendant's memory of the prior crime and understand-

ing that he faced more than one year in prison for committing it. Thus, although *Old Chief* did not directly consider the question presented here, it would effectively be overruled if the Court were now to conclude—contrary to its understanding in that case—that knowledge of status is required under Sections 922(g) and 924(a)(2).

***3. Congress enacted the "knowingly violates" requirement to codify the preexisting interpretation of the firearm laws in the courts of appeals, which did not require proof of knowledge of status***

The history of the federal firearms statutes provides further support for the absence of a requirement to prove a defendant's knowledge of his legal status and personal circumstances in a prosecution under Section 924(a)(2). For well over half a century, the criminal penalties on possession of a firearm by a prohibited person have been understood to require proof of knowledge only of conduct. The current language of Section 924(a)(2) codifies, rather than overrides, that understanding.

a. Sections 922(g) and 924(a)(2) trace their roots to the Federal Firearms Act of 1938 (1938 Act), ch. 850, 52 Stat. 1250 (15 U.S.C. 901 *et seq.*). Like the current law, the 1938 Act prohibited certain categories of people from possessing firearms. See § 2(e) and (f), 52 Stat. 1251; see also § 1(1), 52 Stat. 1250. Also like the current law, those prohibitions did not contain a mens rea requirement, though other regulatory provisions did. See, *e.g.*, § 2(d), 52 Stat. 1251 (15 U.S.C. 902(d) (Supp. IV 1938)). The provision imposing criminal penalties on "[a]ny person violating any of the provisions of th[e] Act" did not include an express mens rea requirement. § 5, 52 Stat. 1252 (15 U.S.C. 905 (Supp. IV 1938)). Courts

of the era accordingly recognized that the possession offenses analogous to those at issue here did not require proof that the defendant knew his own status. See, *e.g.*, *Braswell* v. *United States*, 224 F.2d 706, 710 (10th Cir.), cert. denied, 350 U.S. 845 (1955). And they continued to do so after Congress expanded the original prohibitions to encompass felons, see Act of Oct. 3, 1961, Pub. L. No. 87-342, 75 Stat. 757. See, *e.g.*, *Landsdown* v. *United States*, 348 F.2d 405, 409-410 (5th Cir. 1965).

In 1968, Congress overhauled the firearms laws. See Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Act), Pub. L. No. 90-351, 82 Stat. 197; see also Gun Control Act of 1968 (Gun Control Act), Pub. L. No. 90-618, 82 Stat. 1213 (18 U.S.C. 921 *et seq.*). As before, certain classes of persons—now including aliens unlawfully in the United States—were prohibited from possessing, shipping, transporting, or receiving firearms or ammunition. Gun Control Act § 102, 82 Stat. 1220-1221; Omnibus Act, Tit. VII, § 1202(b), 82 Stat. 236. As before, those provisions contained no mens rea requirement, but many neighboring provisions did. See, *e.g.*, Gun Control Act § 102, 82 Stat. 1220; Omnibus Act, Tit. VII, § 1202(b), 82 Stat. 236-237. And as before, the criminal-penalty provision did not itself contain a mens rea requirement. Accordingly, nearly every court of appeals to consider the issue determined that no knowledge requirement attached to the relevant status elements. See, *e.g.*, *United States* v. *Oliver*, 683 F.2d 224, 229 (7th Cir. 1982); *United States* v. *Pruner*, 606 F.2d 871, 873-874 (9th Cir. 1979); *United States* v. *Williams*, 588 F.2d 92, 92-93 (4th Cir. 1978) (per curiam); *United States* v. *Goodie*, 524 F.2d 515, 518 (5th Cir. 1975), cert. denied, 425 U.S. 905 (1976); *United States* v. *Wiley*, 478 F.2d 415, 418 (8th Cir. 1973), cert. denied, 419 U.S. 879

(1974). But see *United States* v. *Renner*, 496 F.2d 922, 924, 927 (6th Cir. 1974) (requiring knowledge that the defendant was under indictment, out of concern about secret indictments).

b. In 1982, a Senate subcommittee concluded that reform of the firearms laws was necessary in order to ensure that enforcement efforts were focused on the "primary object of limiting access of felons and other high-risk groups to firearms," rather than on "technical *malum prohibitum* charges, of individuals who lack all criminal intent and knowledge," such as "collectors," who had become frequent law-enforcement targets. S. Rep. No. 476, 97th Cong., 2d Sess. 15 (1982) (citation omitted). In 1984, the Senate Judiciary Committee proposed the mens rea requirements that are currently codified in Section 924(a), including the "knowingly violates" requirement that now appears in Section 924(a)(2). S. 914, 98th Cong., 2d Sess. 41 (1984). The Committee explained that, after taking into account law-enforcement warnings against making prosecutions of serious offenders too difficult, it had "specifie[d] a 'knowing' state of mind with respect to offenses that involve the greatest moral turpitude and danger from a justified law enforcement standpoint," but had included a willfulness requirement for less-serious offenses, thereby limiting prosecutions for such offenses to "situations where the offender has actual cognizance of all facts necessary to constitute the offense, but not necessarily knowledge of the law." S. Rep. No. 583, 98th Cong., 2d Sess. 20 (1984).

The next Congress enacted the relevant Senate language in the Firearms Owners' Protection Act of 1986 (FOPA), Pub. L. No. 99-308, 100 Stat. 449. In a report discussing the Senate's proposal, the House of Representatives described its understanding that current

"[c]ase law interpreting the criminal provisions of the [Gun Control Act] ha[s] required that the government prove that the defendant's *conduct* was knowing, but not that the defendant knew that his conduct was in violation of the law." H.R. Rep. No. 495, 99th Cong., 2d Sess. 10 (1986) (emphasis added). The adoption of the language accordingly reflected Congress's codification of the dominant interpretation that courts had given to the precursor offenses that appeared in the 1938 and 1968 enactments, which did not require knowledge of status or personal circumstances.

c. In accord with that legislative design, every court of appeals to consider the issue after the FOPA's enactment has determined that the knowledge requirement in Section 924(a)(2) applies only to the defendant's conduct in violating Section 922(g), not his status. See *United States* v. *Smith*, 940 F.2d 710, 713 (1st Cir. 1991); *United States* v. *Huet*, 665 F.3d 588, 596 (3d Cir.), cert. denied, 568 U.S. 941 (2012); *United States* v. *Langley*, 62 F.3d 602, 604-608 (4th Cir. 1995) (en banc), cert. denied, 516 U.S. 1083 (1996); *United States* v. *Rose*, 587 F.3d 695, 705-706 & n.9 (5th Cir. 2009) (per curiam), cert. denied, 559 U.S. 1019 (2010); *United States* v. *Dancy*, 861 F.2d 77, 80-82 (5th Cir. 1988) (per curiam); *United States* v. *Lane*, 267 F.3d 715, 720 (7th Cir. 2001); *United States* v. *Thomas*, 615 F.3d 895, 899 (8th Cir. 2010); *United States* v. *Kind*, 194 F.3d 900, 907 (8th Cir. 1999), cert. denied, 528 U.S. 1180 (2000); *United States* v. *Miller*, 105 F.3d 552, 555 (9th Cir.), cert. denied, 522 U.S. 871 (1997), abrogated on other grounds by *Caron* v. *United States*, 524 U.S. 308 (1998); *United States* v. *Games-Perez*, 667 F.3d 1136, 1142 (10th Cir. 2012), cert. denied, 571 U.S. 830 (2013); *United States* v. *Capps*, 77 F.3d 350, 352-354 (10th Cir.), cert. denied, 518 U.S.

1027 (1996); *United States* v. *Jackson*, 120 F.3d 1226, 1229 (11th Cir. 1997) (per curiam); *United States* v. *Bryant*, 523 F.3d 349, 354 (D.C. Cir. 2008).

Congress has amended Sections 922 and 924 at least a dozen times during that period.* But it has never altered the "knowingly violates" language in Section 924(a)(2). Although legislative silence does not invariably signal acquiescence, if Congress thought that courts were consistently flouting a new mens rea requirement

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* See Pub. L. No. 115-391, § 403, 132 Stat. 5221 (Section 924); Pub. L. No. 114-94, § 11412(c)(2), 129 Stat. 1688 (Section 922); Pub. L. No. 109-304, § 17(d)(3), 120 Stat. 1707 (Section 924); Pub. L. No. 109-92, §§ 5(c), 6(a) and (b), 119 Stat. 2099-2102 (Sections 922 and 924); Pub. L. No. 107-296, § 1112(f)(4) and (6), 116 Stat. 2276 (Section 922); Pub. L. No. 107-273, §§ 4002(d)(1)(E), 4003(a)(1), 11009(e)(3), 116 Stat. 1809, 1811, 1821-1822 (Sections 922 and 924); Pub. L. No. 105-386, § 1(a), 112 Stat. 3469-3470 (Section 924); Pub. L. No. 105-277, §§ 101(a), 121, 112 Stat. 2681, 2681-71 (Section 922); Pub. L. No. 104-294, § 603(b)-(g) and (m)-(s), 110 Stat. 3503-3505 (Sections 922 and 924); Pub. L. No. 104-208, §§ 657, 658(b), 110 Stat. 3009-369 to 3009-372 (Section 922); Pub. L. No. 103-322, §§ 60013, 110102(a) and (c), 110103(a) and (c), 110106, 110201(a) and (b), 110401(b), (c), and (e), 110503, 110504(a), 110507, 110510-110511, 110514-110515(a), 110517-110518(a), 320904, 320927, 330002(h), 330003(f)(2), 330011(i) and (j), 330016(1)(H), (K), and (L), 108 Stat. 1973, 1996, 1996-2012, 2014-2016, 2018-2020, 2125-2126, 2131, 2140-2141, 2145, 2147 (Sections 922 and 924); Pub. L. No. 103-159, Tits. I, III, §§ 102(a)(1), (b), and (c), 302, 107 Stat. 1536-1537, 1539-1541, 1545 (Sections 922 and 924); Pub. L. No. 101-647, §§ 1101, 1702(b)(1) and (3), 2201-2202, 2203(d), 2204(b) and (c), 3524, 3526-3529, 104 Stat. 4829, 4844-4845, 4856-4857, 4924 (Sections 922 and 924); Pub. L. No. 100-690, §§ 6211-6212, 6451, 6460, 6462, 7056, 7060(a) and (c), 102 Stat. 4359-4360, 4371, 4373-4374, 4402-4404 (Sections 922 and 924); Pub. L. No. 100-649, § 2(a), (b), (f)(2)(A), (f)(2)(B), and (f)(2)(D), 102 Stat. 3816-3818 (Sections 922 and 924); Pub. L. No. 99-570, Tit. I, Subtit. I, § 1402, 100 Stat. 3207-39 to 3207-40 (Section 924); Pub. L. No. 99-408, § 2, 100 Stat. 920-921 (Section 922).

that it had intended to add through the FOPA, presumably it would have acted to correct that perceived error. See, *e.g.*, *Evans* v. *United States*, 504 U.S. 255, 269 (1992).

### C. Congress Had Sound Reasons For Requiring Proof Of A Section 922(g) Defendant's Knowledge Only As To His Conduct, Not His Personal History Or Legal Status

The longstanding approach to firearm prosecutions, in which proof of knowledge is required only as to conduct, and not personal circumstances or status, makes good sense. A contrary approach would have little practical benefit, would be overly burdensome, and would make a defendant's past unsympathetic conduct, rather than his current offense conduct, the focus of the trial.

1. Defendants who actually lack knowledge of their relevant personal circumstances will be few and far between. Petitioner has provided no basis for concluding, for example, that many people "convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year," 18 U.S.C. 922(g)(1), are ignorant of that prior conviction. Nor are many people likely to be unaware of other personal circumstances that place them in the other categories enumerated in Section 922(g), such as being a fugitive from justice, a drug addict, a patient committed to a mental institution, someone who has renounced his citizenship, or a misdemeanant convicted of domestic violence. 18 U.S.C. 922(g)(2), (3), (4), (7), and (9). And the one qualifying circumstance that a person might be less likely to know about —the presence of a restraining order—specifically requires that the order was "issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate." 18 U.S.C. 922(g)(8)(A).

Someone's status as an alien "illegally or unlawfully in the United States," 18 U.S.C. 922(g)(5)(A), is something he presumably does, or at least should, know. As discussed above, see pp. 22-25, *supra*, the law frequently presumes that an alien is aware of his status. Petitioner, for example, applied for a nonimmigrant student visa, signed a form attesting that he understood the terms and conditions of his admission to the United States, underwent an interview at a United States consulate in order to obtain the visa, and received notification from his school regarding the termination of his immigration status. Pet. App. 2a-3a; D. Ct. Doc. 73-3, at 2; D. Ct. Doc. 73-4; D. Ct. Doc. 73-7; D. Ct. Doc. 73-8; 5/16/16 Tr. 187-188, 208, 237-238. If an alien were indeed to lack actual knowledge of his personal circumstances, it is most likely due to his own recklessness or negligence—in which case excusing his conduct would make little sense. And to the extent that an alien's lack of subjective awareness of his immigration status is due to legal complexities, such mistakes of law do not traditionally provide a basis for avoiding criminal liability. See, *e.g.*, *Utermehle* v. *Norment*, 197 U.S. 40, 55 (1905) ("It would be impossible to administer the law if ignorance of its provisions were a defense thereto.").

In addition, a person who purchases his firearms and ammunition from a federally licensed dealer will be put on notice of Section 922(g)'s requirements. Section 922 "establishes a detailed scheme to enable the dealer to verify, at the point of sale, whether a potential buyer may lawfully own a gun." *Abramski* v. *United States*, 573 U.S. 169, 172 (2014). As implemented by federal regulations, that scheme includes a form, part of which is "completed by the buyer," that "lists all the factors disqualifying a person from gun ownership, and asks

the would-be buyer whether any of them apply (*e.g.*, 'have you ever been convicted of a felony?')." *Id.* at 173 (brackets, citation, and ellipsis omitted). The applicant must certify any answers to those questions as "true, correct and complete," *id.* at 174 (citation omitted), and the dealer must "submit that information to the National Instant Background Check System (NICS) to determine whether the potential purchaser is for any reason disqualified from owning a firearm," *id.* at 172-173. Those requirements provide further notice of the law and opportunity to ensure compliance.

2. At the same time, direct evidence of a defendant's knowledge may be complicated to present at trial. In a typical criminal prosecution, knowledge or intent can be inferred from the circumstances of the defendant's offense conduct. See *United States* v. *Williams*, 553 U.S. 285, 306 (2008). Proof that a defendant, say, surreptitiously took a television that did not belong to him will, in itself, tend to prove an intent to steal. Cf. *Regalado Cuellar* v. *United States*, 553 U.S. 550, 567-568 n.8 (2008) ("[W]here the consequences of an action are commonly known, a trier of fact will often infer that the person taking the action knew what the consequences would be and acted with the purpose of bringing them about."). That is not the case, however, with respect to proof of a defendant's knowledge of his personal circumstances or legal status.

Those attributes of a defendant are temporally unrelated to his instant offense conduct of shipping, transporting, possessing, or receiving a firearm. See 18 U.S.C. 922(g). Proving them thus requires opening a window into the past, which may not be straightforward to do. In prosecuting someone with a prior felony conviction

who received a sentence of less than a year of imprisonment for his prior offense, for example, the government might face difficulties in proving that he nevertheless knew and later remembered that he *could have been* punished more severely. In the federal system, a defendant who pleads guilty must be informed of the "maximum possible penalty," Fed. R. Crim. P. 11(b)(1)(H), but no similar requirement applies to defendants who face trial. Even where notice of the maximum penalty was given during the prior proceedings, identifying proof of that fact will often be difficult. Transcripts for old convictions, or for convictions obtained in state courts, may be unavailable. And a defendant can always deny that he heard or "understood," Pet. Br. 4, or later forgot, what was said in court about the maximum possible penalty.

To the extent that those facts would be easy to prove, it would primarily be because they are self-evident. A jury, which can bring into deliberations its "own general knowledge," *Head* v. *Hargrave*, 105 U.S. 45, 49 (1881), and its "commonsense understanding," *Parker* v. *Matthews*, 567 U.S. 37, 44 (2012) (per curiam), is likely to recognize that someone convicted of a felony almost assuredly knew about it. But the self-evidentiary nature of the inquiry is precisely why Congress would *not* have wanted to require such proof in every prosecution.

3. If the government *were* required to prove a defendant's knowledge of his status as a felon, or as falling within any of the other categories enumerated in Section 922(g), it would fundamentally alter the nature of the trial. A substantial portion of the trial, perhaps the majority of it, would be consumed by evidence of the defendant's actions on a previous occasion. And that evidence—about, say, the defendant's prior crime, mental hospitalization, or unlawful presence in the United

States—would not only be time-consuming and distracting, but also potentially prejudicial to the defendant.

The Court recognized as much in *Old Chief*. The Court there found "no question that evidence of the name or nature of the prior offense generally carries a risk of unfair prejudice to the defendant" in a felon-in-possession prosecution. 519 U.S. at 185. Although the risk would "vary from case to case," it would "be substantial whenever the official record offered by the Government would be arresting enough to lure a juror into a sequence of bad character reasoning." *Ibid.* And "[w]here a prior conviction was for a gun crime or one similar to other charges in a pending case the risk of unfair prejudice would be especially obvious." *Ibid.*

Had Congress in fact required proof of knowledge of the defendant's legal status or personal history, such evidence would be a necessary component of the trial. Although somewhat distracting and prejudicial, it would be highly probative, part of the government's "continuous story" of the offense. *Old Chief*, 519 U.S. at 190. Under those circumstances, Rule 404(b) would "guarantee[] the opportunity to seek its admission," and it would thus not be excludable under Rule 403, even if the defendant wanted to stipulate to it. *Ibid.*; see *id.* at 190-192. Particularly given the exceedingly low likelihood that the defendant actually lacked knowledge of his own status (or at least of the facts underlying it), and the difficulties of presenting evidence of such knowledge, Congress sensibly concluded that requiring proof of such knowledge would be unwarranted.

**D. Petitioner's Arguments Lack Merit**

Petitioner nevertheless contends (Br. 11) that the government was required to prove that he had knowledge of his "particular status" under immigration law, which he describes as a "complex" legal question. In making that argument, petitioner does not address the statutory structure under which background circumstances in Section 922(g) have their own mens rea requirements, this Court's decision in *Old Chief*, or the interpretive rules and practical considerations that counsel against requiring proof of a defendant's knowledge of his legal status and personal history. Indeed, he does not contend that self-knowledge of his personal history —*e.g.*, that he was an alien, that he had been admitted on a student visa, and that he had been expelled from Florida Tech months earlier—was required, independent of any requirement to prove knowledge of the legal status that the personal history entailed. He instead advances an interpretation of the statute that erroneously treats Section 922(g) as if that provision *itself* contained the word "knowingly." It does not, and petitioner's proposed reading is unsustainable.

1. Petitioner's argument centers around the assertion (Br. 9) that because Section 924(a)(2) imposes punishment on "'[w]hoever knowingly violates'" Section 922(g), it thereby "attach[es]" a knowledge requirement "to each element of [the] crime" listed in Section 922(g). But even petitioner does not believe that to literally be true, as he acknowledges (Br. 30-32) that no mens rea requirement applies to the jurisdictional element. For reasons explained above, the same is true of the status element.

Petitioner's argument also fails as a matter of plain language. In imposing punishment on a defendant who

"knowingly violates" Section 922(g), Section 924(a)(2) is naturally understood to require proof that the defendant knew of the *conduct* that violated Section 922(g)—*i.e.*, knew of the "ship[ing]," "transport[ing]," "possess-[ing]," or "receiv[ing]" of a firearm or ammunition. But Section 924(a)(2) does not create a new mental-state requirement for the defendant's legal status, or for other circumstance-based elements in Section 922(g) that otherwise would have none. For instance, consider a prohibition against "driving under the influence of alcohol causing the death of a pedestrian," whose applicability does not turn on mens rea for the element of injury. If a separate provision specifies a particular penalty for anyone who "knowingly violates" that law, then under the most straightforward construction of the penalty provision, the defendant would face that punishment so long as he knew that he drove under the influence of alcohol, even if he believed he struck a deer rather than a pedestrian.

Nor would it be sensible to read Section 922(g), as petitioner does, as if the word "knowingly" appeared before each subsection of that provision. The various statuses listed in Section 922(g) are introduced by phrases with different verb tenses, several of which cannot be paired comfortably with an adverb. For instance, subsection (g)(1) applies to a defendant "who *has been convicted*" of a felony, and subsection (g)(7) applies to a defendant "who, *having been a citizen of the United States*, has renounced his citizenship." 18 U.S.C. 922(g)(1) and (7) (emphasis added). It is unclear, as a matter of plain language, how a speaker would follow petitioner's instruction (Br. 9) to "attach" the word "'knowingly'" to each of those clauses.

Because Section 922(g) does not itself specify any mens rea, petitioner also cannot rely (Br. 14-17) on decisions interpreting criminal statutes "that introduce[] the elements of a crime with the word 'knowingly.'" *Flores-Figueroa* v. *United States*, 556 U.S. 646, 652 (2009) (citation omitted); see *id.* at 652-653 (discussing *United States* v. *X-Citement Video, Inc.*, 513 U.S. 64 (1994), and *Liparota* v. *United States*, 471 U.S. 419 (1985)). Such decisions reflect the principle that "where a transitive verb has an object," it may be proper to "assume that an adverb (such as knowingly) that modifies the transitive verb tells the listener how the subject performed the entire action, including the object as set forth in the sentence." *Flores-Figueroa*, 556 U.S. at 650. That linguistic principle has no application here, however, where the term "knowingly" does not "introduce[] the elements of [the] crime" of illegal firearm possession. *Id.* at 652. Instead, the term "knowingly" modifies "violates," which in turn incorporates various regulatory prohibitions, several of which contain their *own* mens rea requirements as to background circumstances. See pp. 21-22, *supra*. And for similar reasons, petitioner cannot rely (Br. 12-13) on the placement of the status element as "first" in the list of elements in Section 922(g)(5)(A); the word "knowingly" neither introduces nor otherwise directly modifies that list.

In addition, petitioner's argument disregards that Section 924(a)(2) is not the only provision that specifies criminal penalties for a violation of Section 922(g). The Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(1), prescribes a minimum sentence of 15 years of imprisonment and a maximum sentence of life for "a person who violates section 922(g)" and also has three prior convictions for a "violent felony" or "serious drug

offense." The ACCA provides a sentencing enhancement for certain recidivists who commit the same crime that is defined in Section 924(a)(2), see, *e.g.*, *Welch* v. *United States*, 136 S. Ct. 1257, 1261 (2016). But unlike Section 924(a)(2), the ACCA's reference to a defendant who "violates" Section 922(g) contains *no* express mens rea requirement. That is unremarkable so long as Section 924(a)(2)'s "knowingly" requirement is understood simply to codify the preexisting and long-held judicial understanding that knowledge of the act is sufficient in this context "to separate wrongful conduct from otherwise innocent conduct," *Elonis*, 135 S. Ct. at 2010 (citations and internal quotation marks omitted). But if Congress had in fact intended a sea change when it added the word "knowingly" to Section 924(a)(2), it would presumably have added it to Section 924(e)(1) as well.

2. Petitioner's efforts (Br. 21-22) to find support for his reading of the statute in the legislative history are misplaced. As the opening section of the FOPA explains, Congress sought to ensure that the law did not "place any undue or unnecessary Federal restrictions or burdens on *law-abiding citizens*." FOPA § 1(b)(2), 100 Stat. 449 (emphasis added; citation omitted). That goal is consistent with the "considerable" testimony Congress heard about "the pressing need" to revise preexisting law "to achieve a more appropriate balance between the constitutional rights of law-abiding gun owners and dealers, on the one hand, and legitimate law enforcement interests, on the other." 1984 Senate Report 3. Congress struck that balance by adding a willfulness requirement to protect law-abiding citizens against technical infractions, while "specif[ying] a 'knowing' state of mind with respect to offenses that involve the greatest

moral turpitude and danger from a justified law enforcement standpoint"—including for illegal-possession offenses under Section 922(g). *Id.* at 20. In doing so, it intended to preserve, not expand, the mens rea requirement under existing law, which required proof of knowledge only as to the defendant's conduct. See pp. 29-34, *supra*.

The floor statements by Senator Hatch, on which petitioner relies (Br. 10, 21), do not show otherwise. As an initial matter, "floor statements by individual legislators rank among the least illuminating forms of legislative history." *NLRB* v. *SW Gen., Inc.*, 137 S. Ct. 929, 943 (2017). In any event, petitioner misconstrues Senator Hatch's comments. As petitioner notes, Senator Hatch observed that "[t]he lack of any criminal state of mind requirements" had "resulted in severe penalties for unintentional missteps." 132 Cong. Rec. 9590 (May 6, 1986); see 131 Cong. Rec. 16,984 (June 24, 1985). But he clarified that his concern was that federal officials had "become mired down in enforcing technical infractions," in part because previous law had "failed to strike an appropriate balance between the constitutional rights of law-abiding gun owners and law enforcement interests." 131 Cong. Rec. 16,984. As previously explained, see pp. 31-32, *supra*, Congress addressed that concern by adding a special willfulness requirement for technical infractions—not by making it harder to prosecute potentially dangerous people who possess firearms.

3. Contrary to petitioner's contention (Br. 25-28), no background principle of statutory interpretation favors his reading of the statute. Petitioner first proposes (Br. 25) that his reading is required by "the constitutional-avoidance canon," on the theory that the uniform application of the firearm laws for the past 80 years raises

"significant Due Process issues." But he offers no support for that suggested constitutional theory, and none exists. This Court has long held that even "strict-liability offenses"—for which *no* mental-state requirement attaches to *any* element—"do not invariably offend constitutional requirements." *United States* v. *United States Gypsum Co.*, 438 U.S. 422, 437 (1978) (plurality opinion); see *id.* at 437-438 (collecting cases upholding strict-liability offenses). And petitioner's due-process theory (which he does not squarely raise) could imply the constitutional invalidity of many prior convictions that require proof of knowledge only as to possession, including convictions that this Court has upheld. See, *e.g.*, *United States* v. *Freed*, 401 U.S. 601, 607 (1971) (upholding conviction for possession of unregistered hand grenades, despite defendant's argument that the government failed to prove his knowledge that the grenades were unregistered, because "the only knowledge required to be proved was knowledge that the instrument possessed was a firearm").

Petitioner next points to this Court's decision in *Staples* v. *United States*, *supra*, to argue that the "long tradition of widespread lawful gun ownership by private individuals in this country" requires proof that he knew about the immigration status that rendered his particular firearm possession unlawful. Pet. Br. 26 (quoting *Staples*, 511 U.S. at 610). In *Staples*, the Court interpreted the provisions that criminalize the possession of unregistered machineguns, 26 U.S.C. 5845(a)(6) and (b), 5861(d), as requiring the government to prove that the defendant "knew of the features of his [machinegun] that brought it within the scope of" the prohibition. 511 U.S. at 619. The Court noted that some items, even

if potentially dangerous, are "so commonplace and generally available that we would not consider them to alert individuals to the likelihood of [their] strict regulation." *Id.* at 611. Here, however, the asserted knowledge requirement does not concern any technical aspect of a firearm that a law-abiding citizen would otherwise be entitled to own, but instead concerns a personal characteristic *of the defendant himself*. As previously explained, see pp. 22-26, *supra*, the law can and does expect someone to know whether he is a convicted felon or an alien illegally or unlawfully in the United States. Such a person is not akin to the millions of law-abiding Americans who acquire firearms through "simple transaction[s] that would not alert a person to regulation any more than would buying a car." *Staples*, 511 U.S. at 614.

Finally, petitioner asserts (Br. 28) that if the Court finds "any ambiguity" regarding the statute's meaning, his proposed reading must be adopted under the "rule of lenity." But that rule applies only when a criminal statute contains a "*grievous* ambiguity or uncertainty." *Muscarello* v. *United States*, 524 U.S. 125, 139 (1998) (emphasis added; citations omitted). Neither "[t]he mere possibility of articulating a narrower construction," *Smith* v. *United States*, 508 U.S. 223, 239 (1993), nor the "existence of some statutory ambiguity" is "sufficient to warrant application of that rule," *Muscarello*, 524 U.S. at 138; see *Abramski*, 573 U.S. at 188 n.10 ("The dissent would apply the rule of lenity here because the statute's text, taken alone, permits a narrower construction, but we have repeatedly emphasized that is not the appropriate test."). Instead, the rule applies "only if, after seizing everything from which aid can be derived," the Court "can make no more than a guess as to what Congress intended." *Muscarello*, 524

U.S. at 138 (citations and internal quotation marks omitted); see *United States* v. *Castleman*, 572 U.S. 157, 173 (2014) (rule applies only where "the Court must simply guess as to what Congress intended") (citation omitted). For the reasons stated above—in light of the statutory text, context, judicial interpretation, and history of enactment—the Court need not "guess as to what Congress intended" here.

**II. THE JUDGMENT BELOW CAN BE AFFIRMED ON THE ALTERNATE GROUND THAT ANY ERROR WAS HARMLESS**

Even if the Court were to agree with petitioner that a prosecution under Sections 922(g) and 924(a)(2) requires knowledge of status, it should nevertheless affirm the judgment below, because any error in this case was harmless beyond a reasonable doubt. See *Neder* v. *United States*, 527 U.S. 1, 8-13 (1999) (jury instruction omitting an element of the offense may be harmless).

A. Petitioner does not dispute the jury's finding that, in December 2015, he was unlawfully in the country and knowingly possessed a Glock firearm at a shooting range and ammunition he had purchased at the range. See Indictment 1-2. And based on the trial evidence, any jury—if instructed of the need to do so—would have found that petitioner knew that he, "being an alien," was "illegally or unlawfully in the United States." 18 U.S.C. 922(g)(5)(A).

The record shows that petitioner is a citizen of the United Arab Emirates who came to the United States in 2013 on an F-1 nonimmigrant student visa. D. Ct. Doc. 73-5; D. Ct. Doc. 73-6; 5/16/16 Tr. 214. Before he entered the country, petitioner agreed and acknowledged by his signature that he was required to remain "enrolled as a full-time student" in order to maintain his

"nonimmigrant student status" and that he would be subject to deportation if he lost that status. D. Ct. Doc. 73-3, at 2; see D. Ct. Doc. 73-4. After petitioner's academic dismissal from Florida Tech, the school sent him emails explaining that his "immigration status w[ould] be terminated" in February 2015 unless he transferred to a new school or left the United States. D. Ct. Doc. 73-7; D. Ct. Doc. 73-8; see 5/16/16 Tr. 218. When questioned by federal investigators, petitioner initially lied about his student status, falsely claiming that he had enrolled at a different university after leaving Florida Tech. 5/17/16 Tr. 99. Following further questioning, however, petitioner admitted that he was no longer attending any school and "was aware that * * * he was out of status for his immigration." *Id.* at 101; see *id.* at 99. A reasonable jury, on that evidence, would find that petitioner knew he was in the United States without legal permission.

B. Petitioner does not directly contend otherwise. He instead focuses (Br. 7-8) on an evidentiary ruling by the district court excluding his driving record. But even if admissible, his driving record would not have created reasonable doubt that petitioner, who admitted knowledge of his immigration status to federal agents, was in fact ignorant of that status.

At trial, petitioner sought to introduce a copy of his Florida driving record as purported evidence that he lacked knowledge of his immigration status. Florida issued petitioner a driver's license on January 27, 2015, but suspended that license indefinitely in August 2015 after petitioner failed to pay a traffic fine. D. Ct. Doc. 74-1, at 4. Petitioner's theory appears to have been that because he had been "stopped by law enforcement" in August 2015, yet "no warrant was issued for his arrest

for immigration purposes or otherwise," he did not know that he was illegally or unlawfully in the United States. 5/17/16 Tr. 128; see *id.* at 119, 125-126. The district court declined to admit petitioner's driving record, stating that "I think that it would be confusing, and I don't think it rebuts any testimony." *Id.* at 129. The court also found that the document was "not relevant," but then observed that "[i]f it were a specific intent crime requiring him to know * * * his immigration status, then the ruling would be otherwise." *Id.* at 130.

Even assuming the district court would in fact have admitted petitioner's Florida driving record if it agreed with petitioner's statutory argument—despite the court's statement that petitioner's attempted showing was "confusing" and did not "rebut[] any testimony," 5/17/16 Tr. 129—that would not have changed the trial's outcome. Evidence that Florida had suspended petitioner's driver's license in August 2015, but that no warrant was issued for his arrest on immigration charges, does not in any way rebut petitioner's admission to federal investigators in December 2015 that he knew he was "out of status for his immigration." *Id.* at 101. Nor does it explain why petitioner felt the need to lie to investigators about having enrolled in a different school after failing out of Florida Tech. Even if the Court agrees with petitioner on the question presented, petitioner's conviction should be affirmed.

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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MARCH 2019

## APPENDIX

1. 18 U.S.C. 922 (2012 & Supp. III 2015) provides:

**Unlawful acts**

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from

mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such

person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or

rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless—

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;[1]

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows

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[1] So in original. Probably should be followed with "and".

or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this

chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the prin-

cipal law enforcement officer of the locality to which the firearm will be delivered are _____

_____

Signature _____ Date _____."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any

person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who[2] has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such inti-

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[2] So in original. The word "who" probably should not appear.

mate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or

licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(*l*) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(*o*)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection—

(A) the term "firearm" does not include the frame or receiver of any such weapon;

(B) the term "major component" means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term "Security Exemplar" means an object, to be fabricated at the direction of the Attorney General, that is—

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

*Provided, however,* That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations

to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Ad-

ministrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary[3] the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear

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[3] So in original. Probably should be followed by "of".

to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge

or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof

or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless—

(A) after the most recent proposal of such transfer by the transferee—

(i) the transferor has—

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(i) the transferee has presented to the transferor a permit that—

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)[4]) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

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[4] See References in Text note below.

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who—

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to

the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are

published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)(i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall—

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)(i) such other person has presented to the licensee a permit that—

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or re-

voke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

[(v), (w) Repealed. Pub. L. 103-322, title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at

which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in

which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) PROVISIONS RELATING TO ALIENS ADMITTED UNDER NONIMMIGRANT VISAS.—

(1) DEFINITIONS.—In this subsection—

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Im-

migration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) EXCEPTIONS.—Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) WAIVER.—

(A) CONDITIONS FOR WAIVER.—Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if—

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) PETITION.—Each petition under subparagraph (B) shall—

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) APPROVAL OF PETITION.—The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner—

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer directly employed by or contracted by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) LIABILITY FOR USE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

(C) DEFINED TERM.—As used in this paragraph, the term "qualified civil liability action"—

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having

lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

2. 18 U.S.C. 924 (2012) provides:

**Penalties**

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (*o*) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under

the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided

for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chap-

ter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is dem-

onstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(*l*), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of

such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(*l*) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(*o*) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is

equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—

(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.